

Final Notice of Denial of Application, Revocation  
Suspension and/or Fine of Firearms License

In the matter of:

- The application for license as a/an \_\_\_\_\_, filed by:  
or  
 License Number 5-48-031-01-2F-04040 as a/an  
Dealer in Firearms Other Than Destructive Devices, issued to:

Name and Address of Applicant or Licensee (Show number, street, city, state and Zip Code)

Leslie Gifford  
d/b/a Gifford Gun Shop  
318 S. 3rd Street  
Burlington, Kansas 66839

Notice is Hereby Given That:

- A request for hearing pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5) was not timely filed. Based on the findings set forth in the attached document, your  
 license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:  
 15 calendar days after receipt of this notice, or  \_\_\_\_\_,  
 license is suspended for \_\_\_\_\_ calendar days, effective \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p)  
 licensee is fined \$ \_\_\_\_\_, payment due: \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- After due consideration following a hearing held pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5), and on the basis of findings set out in the attached copy of the findings and conclusions, the Director or his/her designee concludes that your  
 application for license described above is denied, pursuant to 18 U.S.C., 923(d).  
 application for renewal of license described above is denied pursuant to 18 U.S.C. 923(d), effective:  
 15 calendar days after receipt of this notice, or  \_\_\_\_\_  
 license described above is revoked pursuant to 18 U.S.C., 923(c), 922(t)(5) or 924(p), effective:  
 15 calendar days after receipt of this notice, or  upon receipt \_\_\_\_\_  
 license is suspended for \_\_\_\_\_ calendar days, effective \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p)  
 licensee is fined \$ \_\_\_\_\_, payment due: \_\_\_\_\_, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

If, after the hearing and receipt of these findings, you are dissatisfied with this action you may, within 60 days after receipt of this notice, file a petition pursuant 18 U.S.C. § 923(f)(3), for judicial review with the U.S. District Court for the district in which you reside or have your principal place of business. If you intend to continue operations after the effective date of this action while you pursue filing for judicial review or otherwise, you must request a stay of the action from the Director of Industry Operations (DIO), Bureau of Alcohol, Tobacco, Firearms and Explosives, at 1251 NW Briarcliff Parkway, Suite 600 Kansas City MO 64116

prior to the effective date of the action set forth above. You may not continue licensed operations unless and until a stay is granted by the DIO.

Records prescribed under 27 CFR Part 478 for the license described above shall either be delivered to ATF within 30 days of the date the business is required to be discontinued or shall be documented to reflect delivery to a successor. See 18 U.S.C. 923(g)(4) and 27 CFR § 478.127.

After the effective date of a license denial of renewal, revocation, or suspension, you may not lawfully engage in the business of dealing in firearms. Any disposition of your firearms business inventory must comply with all applicable laws and regulations. Your local ATF office is able to assist you in understanding and implementing the options available to lawfully dispose of your firearms business inventory.

Date	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official	Signature
10/03/2022	William J Miller, Director, Industry Operations, Kansas City Field Division	<i>William J. Miller</i>

I certify that, on the date below, I served the above notice on the person identified below by:

- Certified mail to the address shown below.  
 Tracking Number: 7020 1810 0000 5121 7449
 Or
  Delivering a copy of the notice to the address shown below.

Date Notice Served	Title of Person Serving Notice	Signature of Person Serving Notice
10/3/22	Administrative Assistant	(b)(6)

Print Name and Title of Person Served	Signature of Person Served
Leslie Gifford d/b/a Gifford Gun Shop	

Address Where Notice Served  
 318 S. 3rd Street, Burlington, Kansas 66839

Note: Previous Edition is Obsolete

Leslie Gifford d/b/a Gifford Gun Shop  
318 S. 3<sup>rd</sup> Street  
Burlington, Kansas 66839

RE: FFL# 5-48-031-01-2F-04040

Leslie Gifford d/b/a Gifford Gun Shop, 318 S. 3<sup>rd</sup> Street, Burlington, Kansas 66839 (“Licensee”) holds a Federal firearms license, under number 5-48-031-01-2F-04040, as a dealer in firearms other than destructive devices, issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pursuant to the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478.

On March 9, 2022, ATF issued a Notice to Revoke License, ATF Form 4500 (“Initial Notice”) based upon violations discovered during an inspection commencing on November 29, 2021. Licensee timely requested a hearing to review the Initial Notice.

The hearing was held on July 20, 2022, at the ATF Kansas City Field Division located in Kansas City, Missouri. The hearing was conducted by ATF Kansas City Field Division Director, Industry Operations (“DIO”) William J. Miller. The Government was represented by ATF Kansas City Field Senior Attorney (b)(6) ATF Industry Operations Investigator (“IOI”) (b)(6) appeared as a witness on behalf of the Government.

Licensee Leslie Gifford, a sole proprietor and responsible person for the License, appeared at the hearing. The hearing was recorded and transcribed through a court reporting service. The testimony and exhibits provided by the parties at the hearing constitute the administrative record for this matter.

### **Findings and Conclusions**

Having considered the record in this proceeding, I make the following findings and conclusions:

Licensee has operated under its current Federal firearms license since 2016.<sup>1</sup> Since 2016, ATF conducted a compliance inspection of Licensee in 2019. [Gov. Exs. 1, 10, 11]. During both the qualification and compliance inspection, ATF reviewed the pertinent Federal firearms laws and regulations with Licensee and provided him with resources and reference information regarding the expectations and requirements for a Federal firearms licensee. [Gov. Exs. 2, 10]. During these inspections, Licensee further acknowledged his responsibilities to be aware and familiar with all the laws and regulations governing a licensed firearms business. [*Id.*] Several reference sources and resource materials regarding the GCA requirements were also provided to Licensee.

Following the 2019 inspection, Licensee received a warning letter. [Gov. Ex. 11]. Licensee was informed at the conclusion of this compliance inspection that future violations, repeat or otherwise, could be considered willful and may result in a revocation of the license.

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<sup>1</sup> Licensee previously held a Federal Firearms license that was surrendered in 2011 in lieu of revocation.

Beginning on November 29, 2021, ATF conducted a compliance inspection at Licensee’s business premises. The violations found during this inspection were the basis for the Initial Notice of Revocation and corresponding Appendix, as incorporated herein and discussed more thoroughly as follows:

Violations #1 and #2 - Failure to Maintain Required Records

As to Violation #1, on (b)(3)-112 P occasions, Licensee willfully failed to timely record the acquisition of a firearm, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.125(e).

Specifically, hearing testimony and evidence revealed that Licensee had (b)(3)-112 firearms in inventory that were not included in his Acquisition and Disposition bound book (“A&D book”). [Gov. Ex. 5; Hearing Transcript (“HT”) pgs. 37-38]. During the inspection, Licensee admitted the violation and indicated that he “guess[ed] he overlooked them.” [Gov. Ex. 3].

As to Violation #2, on (b)(3)-112 Public occasions, Licensee willfully failed to timely record the disposition of firearms, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.125(e).

The hearing testimony and evidence demonstrated that (b)(3)-112 firearms were transferred, but the required disposition information was left blank in the A&D book. [Gov. Ex. 5; HT pg. 40]. Additionally, (b)(3)-112 firearms that were listed as acquired could not be found in inventory and could not be reconciled through review of ATF Forms 4473. [HT pg. 41]. This required the completion of a theft and loss report. [Gov. Ex. 6; HT pg. 41-44]. During the inspection, Licensee admitted the violation and indicated that he “guess[ed] he overlooked them.” [Gov. Ex. 3].

Upon reviewing Government Exhibits 3, 5, and 6, along with the testimony provided at the hearing for these violations, I find that Licensee failed to properly record the acquisition of (b)(3)-112 P firearms located in inventory at the time of the inspection. I also find that Licensee failed to timely record all disposition information required in (b)(3)-11 instances, including (b)(3)-112 P for which the firearms remain unaccounted. Licensee was previously cited for acquisition and disposition violations, pursuant to 27 C.F.R. § 478.125(e), following the 2019 inspection. [Gov. Ex. 11]. Licensee was aware of the requirements related to A&D record keeping and exhibited the ability to comply with these requirements on several other occasions, which is further indicative of Licensee’s knowledge of the requirements for proper record keeping, yet Licensee failed to properly do so in these instances.

Therefore, I find Licensee willfully failed to comply with the regulatory requirements as stated in Violations #1 and #2.

Violation #3 – Background Checks

On one occasion, Licensee willfully transferred a firearm to an unlicensed person without first contacting the National Instant Criminal Background Check System (“NICS”)<sup>2</sup> and obtaining a

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<sup>2</sup> NICS is operated by the Federal Bureau of Investigation (“FBI”).

unique identification number before allowing the transfer, in violation of 18 U.S.C. § 922(t) and 27 C.F.R. § 478.102(a).

At the hearing, the Government presented Exhibit 7, which was an ATF Form 4473 concerning a (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) In lieu of conducting a NICS check, Exhibit 7 shows that a Nebraska permit was reviewed and accepted. Testimony established that there are some states that allow permits in lieu of a NICS check, including Kansas, but that the permit must be a Kansas permit. [Gov. Ex. 7; HT pgs. 47-48]. There was further testimony that this would have been a topic covered during an application inspection and at subsequent inspections, and moreover that there are specific instructions in that regard contained within the ATF Form 4473. [HT pgs. 48-49]. At the hearing, Licensee stated, “. . . I apologize for it. I’m guilty of it . . . And I guess I was totally wrong. And I’ll just have to take my consequences.” [HT pg. 49].

ATF Form 4473 has explicit directions and instructions on the form to guide a licensee on the proper completion and timeline for recording all the necessary information and dates. [Gov. Ex. 4]. ATF Form 4473 states, directly above the sections for the NICS information, that a licensee must complete these sections and the NICS background prior to the transfer of the firearm(s). The corresponding instructions on the ATF Form 4473 further provide guidance to licensees on the NICS process and clearly state 18 U.S.C. § 922(t) requires that *prior* to transferring any firearm to an unlicensed person a dealer must first contact NICS. [*Id.* (emphasis added)]. The importance of background check compliance is stressed throughout the ATF Form 4473 and instructions to ensure a prohibited person does not receive a firearm from a licensee. Licensee had previously been cited for violating this provision when he impermissibly accepted out-of-State concealed carry permits and was advised continued failures to comply with this regulation would be considered willful. [Gov. Ex. 11].

Given the evidence in the record, including Licensee’s recognition of the violation and failure to avail himself of the resources at his disposal, I conclude that the NICS violation involving the transfer to (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) occurred as documented and discussed and that this violation was willfully committed.

#### Violations #4 and #5 – ATF Forms 4473

Regarding Violation #4, on (b)(3) - 112 occasion, Licensee willfully failed to obtain a complete and/or accurate Firearms Transaction Record, ATF Form 4473, from the transferee prior to making an over-the-counter transfer of a firearm to a non-licensee, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1).

Specifically, (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) was completed despite Item 30 of the ATF Form 4473 being incomplete. The Government offered Exhibit 8, which was the form reflecting this transaction. Exhibit 8 shows that (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) (b)(3) - 112 Public Law 55 125 Stat 552 (b)(3) - 112 Public Law 55 125 Stat 552 [Gov. Ex. 8; HT pgs. 53-54]. Because the transfer did not take place on the same day as the initial certification, recertification by the purchaser was required in Item 30. Licensee did not dispute this violation, but asked questions about the process that

indicated a lack of understanding of the requirements of completing an ATF Form 4473. [HT pgs. 55-58]. Upon being confronted with the fact that the ATF Form 4473 gives explicit instructions for recertification directly above Item 30, Licensee responded, “I guess I hadn’t read it. I apologize for that. I guess it’s my mistake.” [HT pgs. 58-59].

Regarding Violation #5, on (b)(3) - 112 Pub0 occasions, Licensee willfully transferred a firearm to a nonlicensee without verifying the identity of the transferee by examining the identification document presented and noting the type on a Firearms Transaction Record, ATF Form 4473, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(i).

In support of this violation, the Government presented Exhibit 9, which contained (b)(3) - 112 Pub0 ATF Forms 4473, pertaining to purchases by (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) Exhibit 9 showed that Item 26.a was blank in all (b)(3) - 112 Pub0 forms. [Gov. Ex. 9]. Additionally, in all (b)(3) - 112 Pub0 instances, conceal and carry permits, via Item 29, were used in lieu of recording a valid government issued identification in Item 26.a. [*Id.*; HT pgs. 61-62]. IO (b)(6) explained that this is an impermissible practice and that there is no exception to completing Item 26.a. [HT pg. 62]. In response, Licensee stated, “[I]f I messed up, I messed up big time.” [HT pg. 63].

Upon reviewing Government Exhibits 8 and 9, along with the testimony provided for Violations #4 and #5, I find that Licensee committed these violations. I further find that Licensee was properly made aware as to how to complete ATF Forms 4473. Licensee had in fact properly completed this information in many circumstances, demonstrating the wherewithal to do so successfully. I find that, by his own admission, Licensee could have and should have completed the forms at issue properly, and his failure to do so was due to, at a minimum, plain indifference to the rules for completing ATF Forms 4473. Lastly, as noted above, Licensee has previously been cited and warned about errors specifically concerning 27 C.F.R. §§ 478.124(c)(1) and 478.124(c)(3)(i), and that continued failures to abide by those regulations would be considered willful in nature. [Gov. Ex. 11].

Therefore, upon considered all the information provided in the record, I conclude that Violations #4 and #5 were committed willfully.

#### **Application of Legal Standard for Federal Firearms License Revocations**

ATF may, after notice and opportunity for a hearing, revoke a Federal firearms license if it has reason to believe a licensee has willfully violated any provision of the GCA or the regulations issued thereunder. *See* 18 U.S.C. §§ 923(e) and (f)(3); 27 C.F.R. §§ 478.73 and 478.74.

For the Government to prove a willful violation of the Federal firearms statutes, it need only establish that a licensee knew of its legal obligation and “purposefully disregarded or was plainly indifferent” to the legal requirements. *See Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1042-43 (10th Cir. 2012) (holding that plain indifference towards a known legal obligation meets the willfulness requirement and that plain indifference may be shown with circumstantial evidence); *see also Lewin v. Blumenthal*, 590 F.2d 268, 269 (8th Cir.1979); *On Target Sporting Goods, Inc. v. Attorney General of the United States*, 472 F.3d 572 (8th Cir. 2007) (violations by Federal firearms licensee were deemed willful and justified ATF’s licensing action when the licensee

committed violations including the failure to keep proper records on acquisition and disposition of firearms; ATF inspectors had informed the licensee's owner of the record-keeping and firearm duties and the owner admitted falling behind in these responsibilities); *Trader Vic's v. O'Neill*, 169 F.Supp.2d 957, 965 (N.D. Ind. 2001) (finding that a licensee has a duty to be cognizant of the rules and regulations issued by ATF and has a duty to follow those mandates in the course of his regulated business activities). The Government is also not required to show that the violations occurred with any bad purpose. *Lewin*, 590 F.2d at 269; *On Target*, 472 F.3d at 575.

Additionally, any single willful violation of the Federal statutes or regulations controlling the firearms industry can be a basis for revoking or denying a license. See *Gun Shop, LLC v. United States Dep't of Justice*, No. 4:10-CV-1459 (MLM), 2011 WL 2214671, at \*6 (E.D. Mo. June 3, 2011) (“By the statute’s plain language, even a single willing violation can trigger ATF’s power of revocation.”), citing *American Arms Int'l v. Herbert*, 563 F.3d 78, 86 (4th Cir. 2009); see also *General Store, Inc. v. Van Loan*, 560 F.3d 920, 924 (9th Cir. 2009); *Armalite, Inc. v. Lambert*, 544 F.3d 644, 647 (6th Cir. 2008); *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 498 (7th Cir. 2006).

Furthermore, “[i]mproper recordkeeping is a serious violation.” *Fin & Feather Sport Shop, Inc. v. U. S. Treasury Dept.*, 481 F.Supp. 800, 806 (Neb. 1979) quoting *Huddleston v. United States*, 415 U.S. 814, 824 (1974). “Thus, a firearms dealer, by failing to keep the required records, seriously undermines the effectiveness and purpose of the Act and ultimately endangers society.” *Fin & Feather*, 482 F. Supp at 806. ATF has the right to insist on total compliance with the GCA to retain the privilege of dealing in firearms. *Willingham Sports, Inc. v. ATF*, 348 F.Supp.2d 1299, 1309 n.14 (S.D. Ala. 2004) (“gravity of the policy objectives of the Gun Control Act, from both a law enforcement standpoint and a safety standpoint, strongly militates in favor of allowing the ATF to insist on total compliance as a condition of retaining the privilege of dealing in firearms.”); *Dick's Sport Center, Inc. v. Alexander*, No. 2:04-CV-74482, 2006 WL 799178, at \*5 (E.D. Mich. Mar. 29, 2006) (licensee’s “failure to comply with exacting book keeping regulations may hinder the ATF’s ability to perform its mandated function.”).

Periodic compliance, such as a licensee’s occasional adherence to regulatory obligations, can also support a finding of willfulness. *CEW Properties, Inc. v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 979 F.3d 1271, 1280 (10th Cir. 2020), citing *Simpson v. Att’y Gen.*, 913 F.3d 110, 115-16 (3d Cir. 2019) (noting that a licensee’s “full compliance with [Gun Control Act] requirements in some instances belies his assertion that he did not understand those requirements,” and his “inconsistent conduct suggests both that [he] knew of his obligations and was indifferent to complying with them”).

The evidence and testimony presented at the hearing revealed that Licensee understood the legal requirements concerning the violations documented in the initial Notice. In this regard, ATF reviewed the applicable laws and regulations with Licensee both at the qualification and compliance inspection in 2019. [See Gov. Exs. 2, 10]. ATF provided Licensee with guidance and information on corrective actions for the violations that should have ensured compliance. ATF also warned Licensee following the prior inspection that future violations could be considered willful and could result in revocation of the license, including going so far as to issue an explicit Warning Letter. [Gov. Ex. 11]. Licensee acknowledged awareness of the legal requirements and

responsibilities to hold a Federal firearms license. Licensee demonstrated on other occasions the ability to properly complete, and ensure proper completion by the transferee of, the required records and forms as well as conduct a background check on a non-licensed transferee/purchaser.

Licensee asserted that any violations committed were not intentional and he never intended to hide anything or do anything illegally. However, the GCA does not require an intentional bad act to establish willfulness and the Government is not required to show that the violations occurred with any bad purpose. *Lewin*, 590 F.2d at 269; *On Target*, 472 F.3d at 575. Instead, a purposeful disregard or plain indifference to a known legal obligation is legally sufficient to show willfulness.

As discussed during the hearing, Licensee attributed many of the violations to his business being too busy. [See, e.g., HT pg. 50]. Although I do appreciate that business can be busy and that can be difficult to manage, these factors do not mitigate or alleviate the responsibility for a licensee to comply with the requirements under the GCA. Such distractions or other external factors cannot excuse a licensee's responsibilities to known legal obligations. *Taylor v. Hughes*, 2013 WL 752838, at \*3 (M.D. Pa., 2013) (being "overwhelmed" is not a justifiable excuse for a licensee's noncompliance with mandated laws and regulations and does not negate a finding of willfulness). Despite being busy, Licensee nonetheless continued to acquire firearms and conduct transactions since his last inspection without addressing or correcting the violations he was warned against. Ultimately, there is no legal justification for a licensee's claim that circumstances, such as being busy or overwhelmed, excuses the failure to correctly keep the A&D book, to properly complete ATF Forms 4473, or to conduct compliant background checks. This continued failure to comply with the GCA requirements shows a purposeful disregard or, at a minimum, a plain indifference to the known legal obligations as a Federal firearms licensee.

Licensee offered that he would try to do better in the future. [HT pg. 66]. However, this type of subsequent action does not otherwise mitigate or change the fact that the willful violations occurred as documented during the inspection. *Post hoc* remedial efforts have little bearing on a licensee's willfulness at the time of the violations. *CEW Properties*, 979 F.3d at 1281 n.12 (disregarding a licensee's claim of no willfulness due to subsequent efforts to remedy noncompliance by compiling A&D records into a bound book); see also *Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1079 (7th Cir. 2011) (noting that "workplace changes to ensure compliance with Federal firearms laws" following a revocation notice "come too late," and that the promise to "do better if given another chance is not an argument that reaches the merits of the case"); *Cucchiara v. Sec'y of Treasury*, 652 F.2d 28, 30 (9th Cir. 1981) (concluding that a licensee's attempt to "correct his faulty recordkeeping system, after the violations ... is immaterial to the question of willfulness at the time the violations occurred"); *Sturdy v. Bensten*, 129 F.3d 122 (8th Cir. 1997) (a licensee's after-the-fact efforts to correct the specific violations cited are irrelevant to the issue of willfulness at the time the errors occurred). Despite his statement that he would do better in the future, Licensee's actions, since being warned for each and every violation cited in the 2019 inspection, show that he will not follow through in doing so.

Furthermore, every section of the Form 4473 is important. The required information is on the form to ensure the traceability of firearms and promote public safety and therefore must be

afforded care and attention, as discussed by IOI (b)(6) at multiple points in the hearing. A critical responsibility of a licensee is to help ensure that the Gun Control Act requirements are met, and accurate completion of Forms 4473, contacting NICS to do background checks and properly maintaining A&D books are among those requirements. See *A-TAC Gear Guns Uniforms LLC v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 530 F.Supp.3d 1033, 1039 (D. Colo. Mar. 31, 2021) (“ATF cannot monitor every single firearms dealer at every moment. The Act’s effectiveness thus rests largely on dealers’ taking its [sic] regulations seriously.”). This failure by Licensee to do so undermines the public safety directive of the GCA. Licensee’s systemic problems with recording and maintaining compliant records, and failure to properly conduct and record background checks, further undermine the essential purposes of the GCA.

After presiding over the hearing and giving a full review and consideration of all the testimony and exhibits provided in the hearing record, I find and conclude that Licensee willfully violated the provisions of the GCA, and the regulations issued thereunder. Even though Licensee understood the responsibilities under the GCA, the evidence reveals that Licensee was plainly indifferent to, or purposefully disregarded, the firearms laws and regulations as documented and thoroughly discussed and reviewed herein.

Therefore, I find and conclude Licensee willfully committed Violations #1, #2, #3, #4, and #5 and my findings and conclusions are the basis for my determination to revoke the license.

Accordingly, under the provisions as provided by 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, the Federal firearms license held by Licensee Leslie Gifford d/b/a Gifford Gun Shop, 318 S. 3<sup>rd</sup> Street, Burlington, Kansas 66839, under Federal firearms license number 5-48-031-01-2F-04040, is hereby **REVOKED**.